

AMENDED IN SENATE JULY 3, 2003
AMENDED IN ASSEMBLY MAY 27, 2003
AMENDED IN ASSEMBLY MAY 13, 2003
AMENDED IN ASSEMBLY APRIL 21, 2003
AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 634

Introduced by Assembly Members Steinberg and Simitian
(Principal coauthor: Assembly Member Montanez)
(Coauthors: Assembly Members Berg, Bermudez, Calderon,
Chan, Chavez, Chu, Diaz, Koretz, Laird, Lieber, Lowenthal,
Pavley, Reyes, and Yee)
(Coauthors: Senators Bowen, Romero, and Speier)

February 19, 2003

~~An act to amend Section 2023 of, and to add Section 2031.1 to, the~~
An act to add Sections 2031.1 and 2031.2 to the Code of Civil
Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 634, as amended, Steinberg. Elder abuse actions:
confidentiality.

The Elder Abuse and Dependent Adult Civil Protection Act, among
other things, authorizes civil actions arising from abuse of elderly or
dependent adults.

The Civil Discovery Act of 1986 establishes provisions relating to discovery in civil actions and special proceedings of a civil nature. ~~The Civil Discovery Act of 1986 establishes a list of acts that constitute misuses of the discovery process.~~

~~This bill would expand that list to include destruction of relevant evidence in any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act. The bill would also state the intent of the Legislature in this regard.~~

This bill would ~~also~~ provide that it is the policy of the state that in any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act, ~~confidentiality~~ confidential settlement agreements are disfavored, and would require a showing, as specified, before a confidentiality agreement in this type of proceeding may be recognized or enforced by the court.

The bill would also provide that in any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act, any information that is acquired through discovery and is protected from disclosure by a stipulated protective order shall remain subject to the protective order, except for information that is evidence of abuse of an elder or dependent adult, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 2023 of the Code of Civil Procedure is~~
- 2 *SECTION 1. Section 2031.1 is added to the Code of Civil*
- 3 *Procedure, to read:*
- 4 *2031.1. (a) Notwithstanding any other provision of law, it is*
- 5 *the policy of the State of California that confidential settlement*
- 6 *agreements are disfavored in any civil action the factual*
- 7 *foundation for which establishes a cause of action for a violation*
- 8 *of the Elder Abuse and Dependent Adult Civil Protection Act*
- 9 *(Chapter 11 (commencing with Section 15600) of Part 3 of*
- 10 *Division 9 of the Welfare and Institutions Code).*

1 ***(b) Provisions of a confidential settlement agreement described***
2 ***in subdivision (a) may not be recognized or enforced by the court***
3 ***absent a showing of all of the following:***

4 ***(1) The information is privileged under existing law.***

5 ***(2) The information is not evidence of abuse of an elder or***
6 ***dependent adult as described in Sections 15610.30, 15610.57, and***
7 ***15610.63 of the Welfare and Institutions Code.***

8 ***(3) The party seeking to uphold the confidentiality of the***
9 ***information has demonstrated that there is a substantial***
10 ***probability that prejudice will result from the disclosure and that***
11 ***the party's interest in the information cannot be adequately***
12 ***protected through redaction.***

13 ***(c) Except as expressly provided in this section, nothing in this***
14 ***section is intended to alter, modify, or amend existing law.***

15 ***(d) Nothing in this section may be deemed to prohibit the entry***
16 ***or enforcement of that part of a confidentiality agreement,***
17 ***settlement agreement, or stipulated agreement between the parties***
18 ***that requires the nondisclosure of the amount of any money paid***
19 ***in a settlement of a claim.***

20 ***(e) Nothing in this section is intended to affect medical***
21 ***malpractice actions.***

22 ***SEC. 2. Section 2031.2 is added to the Code of Civil***
23 ***Procedure, to read:***

24 ***2031.2. (a) In any civil action the factual foundation for***
25 ***which establishes a cause of action for a violation of the Elder***
26 ***Abuse and Dependent Adult Civil Protection Act (Chapter 11***
27 ***(commencing with Section 15600) of Part 3 of Division 9 of the***
28 ***Welfare and Institutions Code), any information that is acquired***
29 ***through discovery and is protected from disclosure by a stipulated***
30 ***protective order shall remain subject to the protective order, except***
31 ***for information that is evidence of abuse of an elder or dependent***
32 ***adult as described in Sections 15610.30, 15610.57, and 15610.63***
33 ***of the Welfare and Institutions Code.***

34 ***In that instance, after redacting information in the document***
35 ***that is not evidence of abuse of an elder or dependent adult as***
36 ***described in Sections 15610.30, 15610.57, and 15610.63 of the***
37 ***Welfare and Institutions Code, a party may file that particularized***
38 ***information with the court.***

1 (b) The filing party shall give concurrent notice of the filing
2 with the court and its basis to the party from whom the information
3 was obtained.

4 (c) Any filed information submitted to the court shall remain
5 confidential under any protective order for 30 days after the filing
6 and shall be part of the public court record thereafter, unless an
7 affected party petitions the court and shows good cause for a court
8 protective order.

9 (d) The burden of showing good cause shall be on the party
10 seeking the court protective order.

11 (e) A stipulated protective order may not be recognized or
12 enforced by the court pursuant to this section absent a showing of
13 all of the following:

14 (1) The information is privileged under existing law.

15 (2) The information is not evidence of abuse of an elder or
16 dependent adult as described in Sections 15610.30, 15610.57, and
17 15610.63 of the Welfare and Institutions Code.

18 (3) The party seeking to uphold the confidentiality of the
19 information has demonstrated that there is a substantial
20 probability that prejudice will result from the disclosure and that
21 the party's interest in the information cannot be adequately
22 protected through redaction.

23 (f) If the court denies the petition for a court protective order,
24 it shall redact any part of the filed information it finds is not
25 evidence of abuse of an elder or dependent adult as described in
26 Sections 15610.30, 15610.57, and 15610.63.

27 ~~amended to read:~~

28 ~~2023. (a) Misuses of the discovery process include, but are~~
29 ~~not limited to, the following:~~

30 ~~(1) Persisting, over objection and without substantial~~
31 ~~justification, in an attempt to obtain information or materials that~~
32 ~~are outside the scope of permissible discovery.~~

33 ~~(2) Using a discovery method in a manner that does not comply~~
34 ~~with its specified procedures.~~

35 ~~(3) Employing a discovery method in a manner or to an extent~~
36 ~~that causes unwarranted annoyance, embarrassment, or~~
37 ~~oppression, or undue burden and expense.~~

38 ~~(4) Failing to respond or to submit to an authorized method of~~
39 ~~discovery.~~

1 ~~(5) Making, without substantial justification, an unmeritorious~~
2 ~~objection to discovery.~~

3 ~~(6) Making an evasive response to discovery.~~

4 ~~(7) Disobeying a court order to provide discovery.~~

5 ~~(8) Making or opposing, unsuccessfully and without~~
6 ~~substantial justification, a motion to compel or to limit discovery.~~

7 ~~(9) Failing to confer in person, by telephone, or by letter with~~
8 ~~an opposing party or attorney in a reasonable and good faith~~
9 ~~attempt to resolve informally any dispute concerning discovery, if~~
10 ~~the section governing a particular discovery motion requires the~~
11 ~~filing of a declaration stating facts showing that such an attempt~~
12 ~~has been made. Notwithstanding the outcome of the particular~~
13 ~~discovery motion, the court shall impose a monetary sanction~~
14 ~~ordering that any party or attorney who fails to confer as required~~
15 ~~pay the reasonable expenses, including attorney's fees, incurred by~~
16 ~~anyone as a result of that conduct.~~

17 ~~(10) The intentional destruction or suppression of evidence in~~
18 ~~any civil action the factual foundation for which establishes a~~
19 ~~cause of action for a violation of the Elder Abuse and Dependent~~
20 ~~Adult Civil Protection Act (Chapter 11 (commencing with Section~~
21 ~~15600) of Part 3 of Division 9 of the Welfare and Institutions~~
22 ~~Code). This paragraph is not intended to limit any other authority~~
23 ~~for court sanctions in those actions.~~

24 ~~(b) To the extent authorized by the section governing any~~
25 ~~particular discovery method or any other provision of this article,~~
26 ~~the court, after notice to any affected party, person, or attorney, and~~
27 ~~after opportunity for hearing, may impose the following sanctions~~
28 ~~against anyone engaging in conduct that is a misuse of the~~
29 ~~discovery process.~~

30 ~~(1) The court may impose a monetary sanction ordering that~~
31 ~~one engaging in the misuse of the discovery process, or any~~
32 ~~attorney advising that conduct, or both pay the reasonable~~
33 ~~expenses, including attorney's fees, incurred by anyone as a result~~
34 ~~of that conduct. The court may also impose this sanction on one~~
35 ~~unsuccessfully asserting that another has engaged in the misuse of~~
36 ~~the discovery process, or on any attorney who advised that~~
37 ~~assertion, or on both. If a monetary sanction is authorized by any~~
38 ~~provision of this article, the court shall impose that sanction unless~~
39 ~~it finds that the one subject to the sanction acted with substantial~~

1 ~~justification or that other circumstances make the imposition of the~~
2 ~~sanction unjust.~~

3 ~~(2) The court may impose an issue sanction ordering that~~
4 ~~designated facts shall be taken as established in the action in~~
5 ~~accordance with the claim of the party adversely affected by the~~
6 ~~misuse of the discovery process. The court may also impose an~~
7 ~~issue sanction by an order prohibiting any party engaging in the~~
8 ~~misuse of the discovery process from supporting or opposing~~
9 ~~designated claims or defenses.~~

10 ~~(3) The court may impose an evidence sanction by an order~~
11 ~~prohibiting any party engaging in the misuse of the discovery~~
12 ~~process from introducing designated matters in evidence.~~

13 ~~(4) The court may impose a terminating sanction by one of the~~
14 ~~following orders:~~

15 ~~(A) An order striking out the pleadings or parts of the pleadings~~
16 ~~of any party engaging in the misuse of the discovery process.~~

17 ~~(B) An order staying further proceedings by that party until an~~
18 ~~order for discovery is obeyed.~~

19 ~~(C) An order dismissing the action, or any part of the action, of~~
20 ~~that party.~~

21 ~~(D) An order rendering a judgment by default against that~~
22 ~~party.~~

23 ~~(5) The court may impose a contempt sanction by an order~~
24 ~~treating the misuse of the discovery process as a contempt of court.~~

25 ~~(e) A request for a sanction shall, in the notice of motion,~~
26 ~~identify every person, party, and attorney against whom the~~
27 ~~sanction is sought, and specify the type of sanction sought. The~~
28 ~~notice of motion shall be supported by a memorandum of points~~
29 ~~and authorities, and accompanied by a declaration setting forth~~
30 ~~facts supporting the amount of any monetary sanction sought.~~

31 ~~SEC. 2. Section 2031.1 is added to the Code of Civil~~
32 ~~Procedure, to read:~~

33 ~~2031.1. (a) Notwithstanding any other provision of law, it is~~
34 ~~the policy of the State of California that confidentiality agreements~~
35 ~~are disfavored in any civil action the factual foundation for which~~
36 ~~establishes a cause of action for a violation of the Elder Abuse and~~
37 ~~Dependent Adult Civil Protection Act (Chapter 11 (commencing~~
38 ~~with Section 15600) of Part 3 of Division 9 of the Welfare and~~
39 ~~Institutions Code).~~

1 ~~(b) A confidentiality agreement described in subdivision (a)~~
2 ~~may not be recognized or enforced by the court absent a showing~~
3 ~~that the information is privileged, or a particularized showing,~~
4 ~~document by document, of all of the following:~~

5 ~~(1) Secrecy is in the public interest.~~

6 ~~(2) The proponent has a cognizable interest in the material,~~
7 ~~such as a showing that the material contains a trade secret that~~
8 ~~cannot be adequately protected through redaction, or a showing~~
9 ~~that the material is otherwise protected by law from disclosure.~~

10 ~~(3) Disclosure would cause serious harm.~~

11 ~~(c) Except as expressly provided in this section, nothing in this~~
12 ~~section is intended to alter, modify, or amend existing law.~~

13 ~~(d) Nothing in this section shall be deemed to prohibit the entry~~
14 ~~or enforcement of that part of a confidentiality agreement,~~
15 ~~settlement agreement, or stipulated agreement between the parties~~
16 ~~that requires the nondisclosure of the amount of any money paid~~
17 ~~in a settlement of a claim.~~

18 ~~(e) Nothing in this section is intended to affect medical~~
19 ~~malpractice actions.~~